

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**TERESA L DHONDT**  
Claimant

**APPEAL NO: 09A-UI-16320-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PROGRESS INDUSTRIES**  
Employer

**OC: 10/04/09  
Claimant: Appellant (2)**

Section 96.5-2-a - Discharge  
871 IAC 24.32(1) – Definition of Misconduct

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated October 23, 2009, reference 01, that held she was discharged for misconduct on September 25, 2009, and benefits are denied. A telephone hearing was held on December 7, 2009. The claimant participated. Kelly Decker, HR Vice President, participated for the employer. Employer Exhibits One through Four was received as evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment on December 9, 1996, and last worked for the employer as a full-time shift manager on September 25, 2009. The claimant received a management handbook that contained the policies of the employer. The claimant knew she could be suspended or terminated for sleeping on the job.

The employer discharged the claimant on September 28, 2009 for sleeping on the job. Management received a report from two co-workers that they found the claimant sleeping on a couch during her September 17/18 work shift. The employees submitted written statements. HR VP Decker called a third employee who confirmed the reports. The claimant denied sleeping on the job. The claimant had been issued an action plan and counseling for unrelated work performance issues. The employer chose to discharge the claimant for sleeping on the job in light of the prior work performance issues.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

The administrative law judge concludes the employer has failed to establish that the claimant was discharged for misconduct in connection with employment on September 28, 2009, for sleeping on the job.

The claimant denies sleeping on the job, and due to confidentiality considerations, the employer chose not to offer any witness or written statements that she was caught sleeping on the job. This reason does not excuse the employer from its burden to establish job disqualifying misconduct. Although the employer states this is a serious offense, it allowed the claimant to continue working after this shift up to September 25th.

**DECISION:**

The department decision dated October 23, 2009, reference 01, is reversed. The claimant was not discharged for misconduct on September 25, 2009. Benefits are allowed, provided the claimant is otherwise eligible.

---

Randy L. Stephenson  
Administrative Law Judge

---

Decision Dated and Mailed

rls/pjs